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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,958	01/28/2002	Edward R. diGirolamo	4782-022	4628

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COATS & BENNETT, PLLC
P O BOX 5
RALEIGH, NC 27602

EXAMINER

HORTON, YVONNE MICHELE

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 10/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/058,958

Applicant(s)
DI GIROLAMO ET AL.

Examiner
YVONNE M. HORTON

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jul 28, 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-14, 16-18, and 24-29 is/are rejected.
- 7) ☒ Claim(s) 11, 15, and 19-23 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Allowable Subject Matter

1. The indicated allowableness of claims 14 and 27-29 is withdrawn in view of the newly discovered reference(s) to TURNER. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #5,315,803 to TURNER. TURNER discloses a wall structure including a pair of opposed members (not shown, column 3, lines 3-11); a plurality of spaced apart studs (14) connected between the unlabeled top and bottom members; openings (15) in the studs (14); and at least one diagonal brace (10,11) extending through the openings (15) in the studs (14). In reference to claim 2, the wall structure inherently includes opposed corner areas (also not labeled) because the frame is square, column 3, line 10 and squares inherently have corners wherein the diagonal braces (10,11) extend through openings (15) and connected to the corner areas (not labeled). Regarding claim 3, a pair of diagonal braces (10,11) extend through openings (15) within the studs (14). In reference to claim 4, the diagonal brace (10,11) is an elongated rod. Regarding claim 5, the wall structure, as mentioned above, inherently includes

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opposed corner areas wherein the elongate rods (10,11) are connected to the corner areas (unlabeled). In reference to claim 6, the structure inherently includes four corner areas (not labeled) and a pair of diagonal rods (10,11) connected therebetween.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

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the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 7-10 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,315,803 to TURNER in view of US Patent #5,657,606 to RESSEL et al.

As disclosed above, TURNER discloses the basic claimed wall structure except for the structure explicitly including a pair of sides and connectors. As stated above TURNER does disclose that his wall structure is square; however, he does not explicitly detail the use of side members.

Although inherent, RESSEL et al. teaches that it is known in the art to provide a wall structure with side members (18,19) wherein the diagonal brace (32a-d) extend through a central area (CA) disposed between the side members (18,19) see the marked attachment. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the structure of TURNER with the side members of RESSEL et al. in order to ensure that the wall structure that is rigid. In reference to claim 8, the pair of diagonal braces (10,11) of TURNER would then extend through the central area (not shown), see the marked attachment. Regarding claim 9, as detailed above, the wall structure inherently includes opposed corner areas (not labeled) wherein the diagonal braces (10,11) extend thereto. However, TURNER does not explicitly detail the use of a corner connector. Hence, RESSEL et al. teaches that it is known in the art to provide a wall structure with corner connectors (40a,e) and (42a,e). Hence, it would have been obvious to one having ordinary skill in the art to provide the wall structure of

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TURNER with the corner connectors of RESSEL et al. in order to provide the wall structure with added rigidity and to prevent the wall from twisting under applied loads. In reference to claims 10 and 12, inherently, the diagonal braces (10,11) of TURNER would be connected to the connectors (40a,e) and (42a,e) of RESSEL et al. in tension at all times due to the fact of the fasteners used to attach the connectors (40a,e) and 42a,e). Regarding claim 13, each connector (40a,e) and (42a,e) is anchored between the stud (30a-d) and one of the opposed members (14,16). Hence, the modification of RESSEL et al. Would allow the connectors (40a,e) and 42a,e) to also be connected between the studs (14) and top and bottom members of TURNER. In reference to claim 14, each connector (40a,e) and (42a,e) of RESSEL et al. Includes two spaced plates that eventually merge to form an L-shape.

7. Claims 16-18 and 24-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,315,803 to TURNER in view of US Patent #5,657,606 to RESSEL et al.

Regarding claims 16 and 25, TURNER discloses a wall structure including a pair of opposed members (not shown, column 3, lines 3-11); a plurality of spaced apart studs (14) connected between the unlabeled top and bottom members; openings (15) in the studs (14); and at least one diagonal brace (10,11) extending through the openings (15) in the studs (14). TURNER discloses the basic claimed wall structure except for the structure explicitly including connectors. TURNER does not explicitly detail the use of a corner connector. Hence, RESSEL et al. teaches that it is known in the art to provide a wall structure with corner connectors (40a,e) and (42a,e). Hence, it would have been obvious to one having ordinary skill in the art to provide the wall

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structure of TURNER with the corner connectors of RESSEL et al. in order to provide the wall structure with added rigidity and to prevent the wall from twisting under applied loads. In reference to claims 17 and 18, the diagonal braces (10,11) is an elongated rigid shaft member. Regarding claim 24, as stated above TURNER does disclose that his wall structure is square; however, he does not explicitly detail the use of side members. Although inherent, RESSEL et al. teaches that it is known in the art to provide a wall structure with side members (18,19) wherein the diagonal brace (32a-d) extend through a central area (CA) disposed between the side members (18,19) see the marked attachment. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the structure of TURNER with the side members of RESSEL et al. in order to ensure that the wall structure that is rigid. In reference to claim 8, the pair of diagonal braces (10,11) of TURNER would then extend through the central area (not shown), see the marked attachment. In reference to claim 26, the diagonal members (10,11) extend through the openings (15) in the studs (14). Regarding claim 27, each connector (40a,e) and (42a,e) of RESSEL et al. includes two spaced plates that eventually merge to form an L-shape. In reference to claim 28, the connectors (40a,e) and (42a,e) have a first section (colored orange) and a second section (colored blue); wherein the second section (colored blue) extends between the stud (18) and one of the opposed members (14). Regarding claim 29, the connectors are attached by fasteners (not labeled) that extend through the second section (colored blue), see Figure 2.

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Allowable Subject Matter

8. Claims 11,15 and 19-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

9. Applicant's arguments with respect to claims 1-29 have been considered but are moot in view of the new ground(s) of rejection.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909.

YMH



Patent Examiner

October 20, 2003

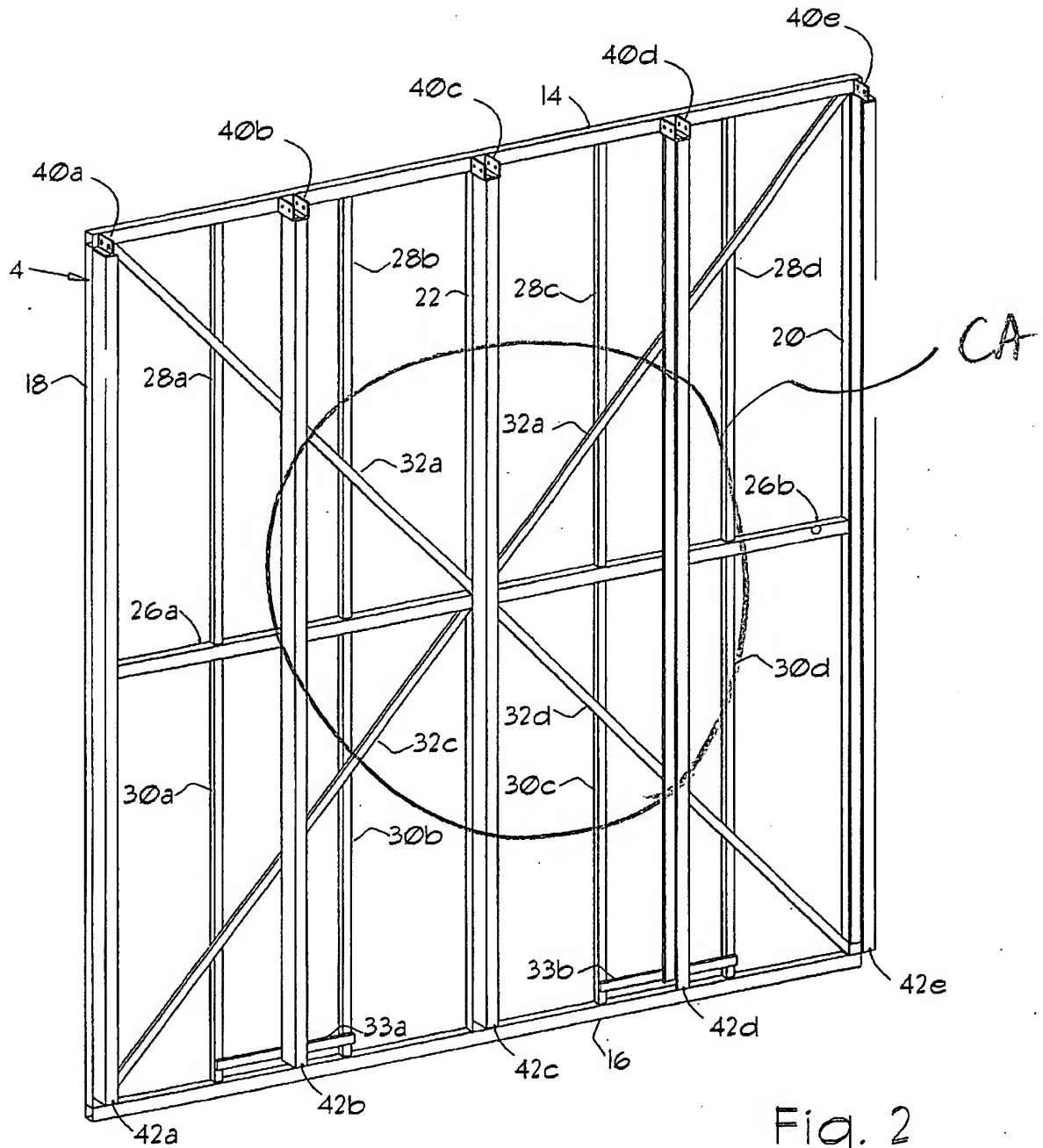


Fig. 2